

### **REMARKS/ARGUMENTS**

New claims 26-30 have been added. New claims 26-28 depend upon independent claim 1, 16, and 23, respectively. Claims 26-28 recite the layer of cellular material infiltrates the fabric layers. New independent claim 29 recites an insulation which is resistant to ballistic impact comprising a first layer of high-strength, ballistic resistant polymeric fabric comprising a honeycomb cross-section having a plurality of voids defined by individual honeycomb sections, wherein a layer of material having a cellular structure disposed upon said first fabric layer infiltrates the fabric layers. Claim 30 depends upon independent claim 26 and recites that the voids defined by individual honeycomb sections are filled with the cellular structure. Support for these amendments is found throughout the application as originally filed, for example paragraph [0030] of the published application (i.e., U.S. Publication No. 2005/0085146).

Claims 1, 2, 4 – 23, and 26-30 are currently pending. Claims 3 and 24 – 25 have been cancelled.

Claims 1, 2, 4 – 9, and 14 – 23 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0161989 to Dennis in combination with Steeghs. Claims 10 – 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Dennis, Steeghs, and Brink. Applicants respectfully traverse these rejections.

Dennis is directed to an anti-projectile barrier fabric having a pair of internal foam layers that are sandwiched between, and bonded to, two outer cloth-like fabric layers. The Office Action asserts that the foam layers would partially infiltrate the fabric layers. However, there is absolutely no support for such an assertion, and the Examiner has provided none except for her own opinion. In fact, Dennis does not having any teachings with respect to the foam layers infiltrating the fabric layers, and as such this element is missing. To make up for this shortcoming, the Examiner alleges that in her opinion the foam would infiltrate the fabric layers at least partially to a degree. In other words, it is the Examiner's opinion that the cellular material of Dennis *inherently* infiltrates the fabric layers.

To establish inherency, the missing element must necessarily be present. Inherency cannot be established by probabilities or possibilities. Further, according to MPEP 2112 IV, the Examiner must provide rationale or evidence tending to show inherency. In the present case, the Examiner has provided neither rationale, nor evidence in support to the present claim rejections.

Rather, the presence of the missing element (i.e., infiltration of the cellular material at least partially into the fabric layers) is provided solely based on the Examiner's opinion. This is contrary to the standard set forth in the MPEP. Rather, this rejection is based on possibilities and speculation; it is not based on what Dennis actually teaches. As such, the rejection based on Dennis should be withdrawn.

In fact, contrary to the Examiner's assertions, one would expect the opposite. That is, that the cellular material of Dennis does not infiltrate the fabric layers. As pointed out in Applicants' last response, Dennis describes that the fabric layers 14, 15 are preferably joined to the foam layers 16, 17 with a heat-settable adhesive that is disposed between the fabric and foam layers. Dennis provides no teachings of how the fabric layers would be joined to the foam layer absent the adhesive layer. From the discussion at paragraph 0015 of Dennis, it is evident that an adhesive layer is disposed between the foam layers and the outer fabric layers. The adhesive layers provide separation between each respective foam and fabric layer and would prevent the foam layers from infiltrating the fabric layers. Additionally, the use of an adhesive to bond the fabric layers to the foam layers necessarily implies that the fabric layers are applied to previously formed foam layers, and as such, the foam layers do not partially infiltrate the fabric layers. Neither Steeghs nor Brink even include a cellular core and therefore do not provide this element.

Further, the assertion that the foam layers would partially infiltrate the fabric layers is not supported by the teachings of Dennis and is based on pure speculation at best. In fact, the assertion is contrary to the specific teachings of Dennis because of the presence of the adhesive layers between the foam and fabric layers. The Office has failed to provide any factual basis that supports the assertion that the foam layers partially infiltrate the fabric layers. In order to establish a *prima facie* case of obviousness, the combination of references must disclose or suggest each and every element. In the present case, the Office has failed to establish that the combination of references disclose or suggest an insulation having a cellular core that at least partially infiltrates the fabric layers. Accordingly, independent Claims 1, 16, and 23 and any claims dependent thereon are patentable over the cited references, whether considered individually or in combination, because the references fail to disclose or suggest an insulation having a cellular core that at least partially infiltrates the fabric layers.

The Office asserts that the adhesive layer is not present because it is not shown in the Figures 2 and 3. This assertion is without merit because none of the figures show the adhesive layer, although the specification in discussing Figures 2 and 3 specifically states that the fabric layers 14, 15 are preferably joined to the foam layers 16, 17 with a heat-settable adhesive that is disposed between the fabric and foam layers. Thus, Dennis teaches the presence of the adhesive layer although it is not shown in the figures. A reading of the specification shows that the structure described in Figures 2 and 3 includes adhesive layers joining fabric layers and the foam layers together. Accordingly, the Examiner's arguments are not supported by the explicit teachings of Dennis.

Thus, the combination of Dennis, Steeghs and Brink fails to disclose or suggest the claimed invention.

In view of the foregoing amendment and remarks, it is respectfully submitted that the rejections under 35 U.S.C. § 103(a) have been overcome, and that the pending claims are in condition for immediate allowance.

Additionally, neither Dennis, Steeghs nor Brink teach or suggest infiltration of a high-strength, ballistic resistant polymeric fabric by a layer of material having a cellular structure, let alone a composite insulation in which a cellular layer infiltrates a high-strength, ballistic resistant polymeric fabric comprising a honeycomb cross-section as recited in new claims 26-30. As such, any combination of these references also fails to teach or suggest these elements. Therefore, new claims 26-30 are patentable over the cited references.

### **Conclusion**

In view of the amendments and remarks made above, Applicant submits that the pending claims are now in condition for allowance. Applicant respectfully requests that the claims be allowed to issue. If the Examiner wishes to discuss the application or the comments herein, the Examiner is urged to contact the undersigned by telephone.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

Appl. No.: 10/669,980  
Amdt. dated 03/17/2008  
Reply to Office Action of 10/16/2007

therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Johnson, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

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LEGAL01/13077362v1

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